

CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 769.

MEYER GRAUBARD, PLAINTIFF IN ERROR,

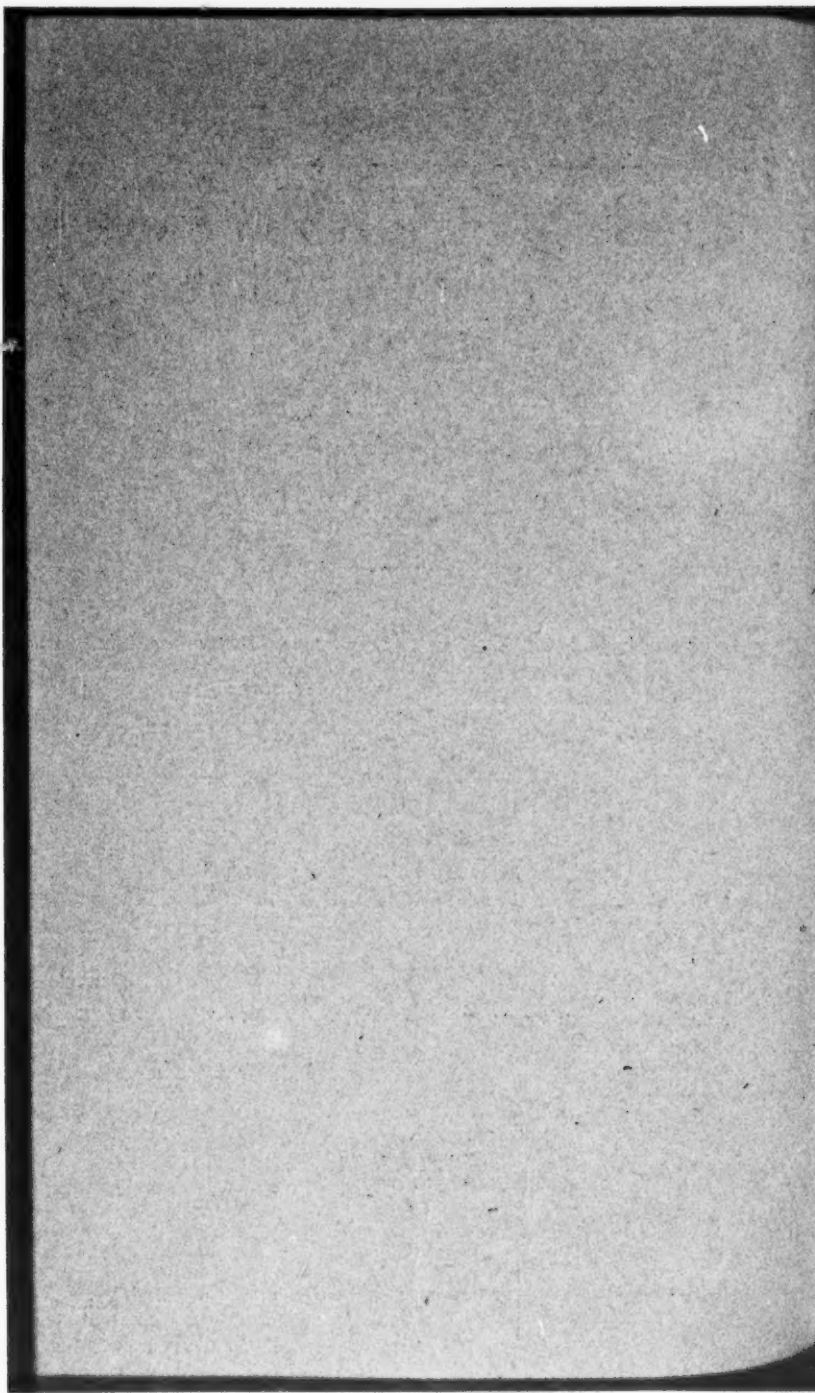
vs.

THE UNITED STATES OF AMERICA.

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED NOVEMBER 21, 1917.

(26,238)



(26,236)

SUPREME COURT OF THE UNITED STATES.

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MEYER GRAUBARD, PLAINTIFF IN ERROR.

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
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Writ of Error.

United States of America, ss:

THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judges of the District Court of
the United States for the Southern District of New
York, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Meyer Graubard, defendant, a manifest error hath happened, to the great damage of said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

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WITNESS the Honorable Edward D. White, Chief Justice of the United States, the 31st day of August, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

Allowed by
Louis D. Brandeis,
Associate Justice of the Supreme Court
of the United States.

Indictment.

DISTRICT COURT OF THE UNITED STATES
OF AMERICA,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City and County of New York, within and for the District aforesaid, on the first Tuesday of July, in the year of our Lord one thousand nine hundred and seventeen, and continued by adjournment to and including the 13th day of July in the year of our Lord one thousand nine hundred and seventeen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Grand Jurors of the United States of America, within and for the District aforesaid, on their oath

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present that on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, the President of the United States of America duly issued his proclamation as provided by the Act of Congress approved May 18, 1917, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," in which said proclamation the President of the United States duly proclaimed and gave notice to all persons subject to registration in the several States and in the District of Columbia, in accordance with the said Act of Congress approved May 18, 1917, that the time and place of such registration shall be between 7 A. M., and 9 P. M., on the fifth day of June in the year of our Lord one thousand nine hundred and seventeen, at the registration place in the precinct wherein they may have their permanent homes; that those who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day therein named are required to register, excepting only officers and enlisted men of the regular army, the navy, the marine corps, and the national guard and naval militia, while in the service of the United States, and officers in the officers' reserve corps, and enlisted men in the enlisted reserve corps, while in active service;

AND THE GRAND JURORS AFORESAID, on their oath aforesaid, do further present that Meyer Graubard, late of the City and County of New York, in the District aforesaid, heretofore, to wit, on the fifth day of June in the year of our Lord one thousand nine hundred and seventeen, at the Southern District of New York and within the jurisdiction of this Court, being a male person between the ages of twenty-one

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and thirty, both inclusive, and being subject to registration in accordance with the regulations prescribed by the President, and upon proclamation by the President and other public notice given by him and by his direction, stating the time and place for such registration, being under the duty as a person of the designated ages other than an officer and enlisted man of the regular army, the navy, and the national guard and naval militia, while in the service of the United States to present himself for and to submit to registration, under the provisions of the Act of Congress approved May 18, 1917, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," unlawfully and wilfully did fail and refuse to present himself for registration and to submit thereto, as provided by the said Act of Congress, approved May 18, 1917, and in accordance with the regulations prescribed by the President in his proclamation duly issued on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen; against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided (Sec. 5 of the Act of May 18, 1917).

FRANCIS G. GAFFEY,
U. S. Attorney.

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(Endorsed.)

U. S. District Court. The United States of America vs. Meyer Graubard. Indictment: Wilfully failing to register, and to submit thereto. Sec. 5, Act of May 18, 1917. Francis G. Gaffey, U. S. Attorney. A true bill: Charles A. Heaton, Foreman. U. S. District Court, S. D. of N. Y., filed July 13, 1917.

1917

- July 16 L. Hand, J.: The defendant arraigned and indet. read. Deft. pleads not guilty, with leave to withdraw bail fixed at \$1,000.
- July 30 Trial begun, Manton, D. J. Jury sworn. Verdict, guilty as charged. Sentenced to one year, Mercer County Jail, Trenton, N. J. Stay of execution of sentence granted until Aug. 1, 1917.

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Stipulation Settling Bill of Exceptions.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff and
Defendant-in-Error.

against

MEYER GRAUBARD,
Defendant and
Plaintiff-in-Error,

It is hereby stipulated and agreed that the annexed is a true bill of exceptions of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, October 1, 1917.

I. M. SACKIN,

Attorney for Defendant and
Plaintiff-in-Error.

FRANCIS G. CAFFEY,

Attorney for Plaintiff and
Defendant-in-Error.

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Order Settling Bill of Exceptions.

At a Stated Term of the United States District Court for the Southern District of New York, held at the Post Office Building in the Borough of Manhattan, City of New York, on the 1st day of October, 1917.

Present: Hon. Martin T. Manton, Judge United States District Court.

UNITED STATES OF AMERICA,
Plaintiff and Defendant-in-Error,

against

MEYER GRAUBARD,
Defendant and Plaintiff-in-Error.

This action having been tried before a stated term of this Court, and a jury having rendered a verdict in favor of the plaintiff and against the defendant, and this bill of exceptions having duly prepared containing all the evidence, it is now,

Duly settled, signed and made a part of the record in this case and ordered on file herein this 1st day of October, 1917.

MARTIN T. MANTON,
United States District Judge.

Notice of settlement waived Oct. 1, 1917.

FRANCIS G. CAFFEY,
United States Attorney.

UNITED STATES V. GRAUBARD

Bill of Exceptions.

IN THE
UNITED STATES DISTRICT COURT,
IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,	}
Plaintiff,	
against	}
MEYER GRAUBARD,	
Defendant.	}

This cause came on for hearing before the Hon. Martin T. Manton, District Judge, holding Court, and a jury, on the 30th day of July, 1917. Present, Francis G. Caffey, United States Attorney, and Harold A. Content, Assistant United States Attorney, for the plaintiff; Jacob Panken, attorney for the defendant.

A jury having been duly empaneled and sworn.

Jacob Panken to the Court:

If your Honor please, I move to dismiss the indictment against this defendant on the ground that the indictment is based upon the Act of May 18, as passed by Congress, and Congress was without power to pass such an Act, and it is unconstitutional, it is against the Constitution of the United States. I respectfully call your Honor's attention especially to Article 3, Section 1 of the Constitution, which provides as follows:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior

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courts as the Congress may from time to time ordain and establish."

Under this act, the power to create courts is delegated by Congress to the President of the United States, in that, that the act provides that the President of the United States shall create local tribunals, such as appellate tribunals, on the question of exemption.

That is one point I want to raise at this time.

Now, I would ask your Honor again to direct your attention—

The Court: Let me get this clear. What is your point?

Mr. Panken: My point is, it is unconstitutional because of the fact that it delegates to the President of the United States the creation of courts, while the Constitution in Section 1 of Article 3, vests the power to create courts in Congress.

The Court: What follows from that?

Mr. Panken: That the law as drafted is unconstitutional.

The Court: For what reason?

Mr. Panken: Because it delegates the power that has been vested in it to someone else. It is a violation of the Constitution; it cannot delegate the power which has been vested in it, the Congress, as a constitutional body, and it is limited by the provisions of the Constitution.

The Court: What is the next point?

Mr. Panken: I ask your Honor in that connection to direct your attention to the 5th amendment, which reads: "No person shall be deprived of right, liberty or property without due process of law."

We contend that, in this case, in view of the 13th amendment of the Constitution of the United States, which reads as follows:

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"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

In this case, the men are deprived of their liberty without due process of law.

The Court: I do not follow the first point. What has the Court to do with that. What is your argument from that?

Mr. Panken: I did not hear you.

The Court: You say it is unconstitutional for the President of the United States to create courts?

Mr. Panken: Yes, sir.

The Court: What is the court?

Mr. Panken: The exemption boards, and the appellate boards; the creation of those tribunals are delegated by power to be established by the President of the United States.

In that connection, I want to say this; these tribunals will have the power to take away the liberty from men without due process.

The Court: You mean these boards who will pass on excuses?

Mr. Panken: All excuses.

There is another point I would like to call to your Honor's attention; and that is, that the law is discriminatory. It exempts—it is contrary to the First Amendment of the United States Constitution; it is discriminatory in that sense, in that the law provides that certain people holding certain beliefs, shall be exempt, naming practically one church by inference; it only applies to one church, that of the Quakers, objectors who are conscientious objectors, and applying to a certain organization now in existence, they shall be exempt from service.

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The Court: As I understand it, the man who asks to be exempted, should have a conscientious belief before Congress passed the Act.

Mr. Panken: If your Honor please, a man may have a conscientious objection and not belong to that particular church.

The Court: It does not say a particular church, it says, if he has a conscientious belief.

Mr. Panken: It says, "a well recognized sect." It says a religious organization, a man must belong to a religious organization. He may have the belief it is wrong to take life, and because of that he is a conscientious objector. He may disbelieve in war, and where a conscientious man objects to going to war, and does not belong to any religious party or organization, that is a discrimination; it is a discrimination against such persons, and it is a discrimination in favor of such religious organization.

The Court: What is the next point?

Mr. Panken: I will rest on that.

The Court: I will deny your motions. I hold that the law is constitutional.

Mr. Panken: May I have an exception? The defendant admits all the facts in the case.

The Court: I do not think I can take your admission.

Mr. Content: I think I had better prove the Government's case.

Mr. Panken: We do not raise the question. We did not raise the issue. We admit we did not register.

The Court: I understand your position.

Mr. Content opened the case to the jury on behalf of the Government.

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PAUL HOFHERR testified as follows:

Direct-examination by Mr. Content:

I am an employee of the United States Department of Labor and am the official interpreter at the Immigrant Station at Ellis Island. I have been in the Government service since February, 1904. I know the defendant, Meyer Graubard, for eight years and a half. On the 6th day of June, on the day after registration, at 113 Forsyth Street, I saw and had a conversation with Graubard. I was in the coffee and tea house which is owned by his father and it is there where I saw him. I know him to be over twenty-one years of age, and at that time I was a special agent of the United States Department of Justice, and as such part of my duties were to find out if I could, all those who were not registered within the age to register. I asked the defendant whether he did register. He said no. I asked why and he said it is unconstitutional. I then said he is born in the state and in the United States, of the age to register. He told me he did not register. Four or five days after that I saw him again and had another conversation with him. He said I have not registered. Any time the Government wants to have me arrested I am ready to surrender. I believe I asked him whether he would not register and he said he would not. I reported the facts to the Department of Justice.

CROSS-EXAMINATION by Mr. Panken:

I have known Mr. Graubard about eight to ten years. I have known his father for a number of years. He is about twenty-two or three years old. I have known him since he was a boy of about twelve

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years old. I saw him quite often. I know some of his friends and his parents. I know his people very well. I saw him about two or three times a week. I came to have coffee at his father's place. I spoke to other people about him.

By the Court:

His general reputation among the people who know him as to truthfulness and veracity is very good.

EDWARD L. NEWMAN, being duly sworn, and examined as a witness, testified:

By Mr. Content:

I am a special agent for the Department of Justice. Prior to that I was also attached to the United States Immigrant Station situated in New York Harbor. I have been a Government employee since December 1, 1903. On the 13th day of July, 1917, I arrested the defendant, Meyer Graubard, and prior to placing him under arrest I had the following conversation with him in front of 113 Forsyth Street, New York City, where he resides. I asked him whether he registered. He said no. I asked him would he care to register. He said no. I asked him how old he was. He said twenty-two going on twenty-three. I asked him where he was born and he said he was born in the United States. I further admonished him on the fact that if he refused to register he would be subject to some penalty convicted in open court. He said, well, he was willing to take any punishment which was meted out to him. I also spoke to him that subsequent to serving any sentence or paying any penalty that the

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Court might decide, he was subject to register as the law provides. He said he did not care anything about it. I said then you may be put into the army anyhow. He said you have to put a bullet into me before you would put a United States Army uniform on me. I placed him under arrest and brought him to the United States Attorney's office and arraigned him before United States Commissioner Hitchcock on the same day.

CROSS-EXAMINATION by Mr. Panken:

He did say something to me about raising the question of the constitutionality of that law. If I remember right, he objected to the draft law on the ground that it was unconstitutional, in his explanation to me.

It is conceded that on the 18th day of May, 1917, in accordance with the provisions of Section 5 of the Act of Congress approved May 18, 1917, the President of the United States issued his proclamation, fixing June 5, 1917, between the hours of 7 A. M., and 9 A. M., as the date for registration, mentioned in Section 5 of the aforesaid Act, and that he called upon all male persons who had attained their twenty-first birthday on that day, and not yet attained their thirty-first birthday on the date, to present themselves for and submit to registration as provided by law.

Mr. Content: The Government rests.

Mr. Panken: The defendant rests. I renew the motions.

The Court: The motions are denied.

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Mr. Panken: I take an exception.

Mr. Panken summed up to the jury on behalf of the defendant.

Mr. Content summed up to the jury on behalf of the Government.

Judge's Charge.

MANTON, J.:

Gentlemen of the Jury—This defendant is charged with a violation of what is commonly known as the Selective Draft Law of the United States; and he is charged with this crime by an indictment of the Grand Jury for this, the Southern District of New York.

The Section of the law which we have particularly to do in this trial is this:

"Section 5. That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation other
by the President, or rather public notice given by him or by his direction, stating the time and place of such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men in the regular army, the navy, and the national guard and naval militia, while in the service of the United States, to present themselves for, and submit to registration under the provisions of this Act; and every such person shall be deemed to have notice of the requirements of this Act upon the publication of said proclamation or other notice as aforesaid, given by the President, or by his direction; and any person who shall wilfully fail or refuse to present himself for registration, or to

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submit thereto as therein provided, shall be guilty of a misdemeanor and shall, upon conviction in the District Court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, and shall thereupon be duly registered; provided, that in the call of the docket, precedence shall be given, in courts trying the same, to the trial of criminal proceedings under this Act."

That simply has to do with the disposition of the case if it reaches the criminal courts. The preceding provision which I have read to you, you have to do with in this litigation.

Now, the Grand Jury of this District has charged this defendant by its indictment, of this crime, the substance of which I shall read; that within and for this District, the Grand Jury say, that the President of the United States of America duly issued his proclamation as provided by the Act of Congress, approved May 18, 1917, which I have just read to you, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," in which said proclamation the President of the United States duly proclaimed and gave notice to all persons subject to registration in the several states and in the District of Columbia, in accordance with the said Act of Congress, approved May 18, 1917, that the time and place of such registration shall be between 7 A. M., and 9 P. M., on the 5th day of June, in the year of our Lord, one thousand nine hundred and seventeen, at the registration place in the precinct wherein they may have their permanent homes; that those who shall have attained their twenty-first birthday, and who shall not have attained their thirty-first birthday, on or before the day therein named, are required to register, excepting only officers and enlisted

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men of the regular army, the navy, the marine corps, and the national guard and naval militia, while in the service of the United States, and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service.

The Grand Jury then charge Meyer Graubard of New York County, within this said District of New York, with this: That on the 5th day of June, 1917, within this district, and within the jurisdiction of this court, he being a male person, and being between the ages of twenty-one years on his last birthday, and thirty-one years, and being subject to registration in accordance with the regulations prescribed by the President, those which I have just called your attention to, and upon proclamation by the President and other public notice given by him and by his direction, stating the time and place for such registration, being under the duty as a person of the designated ages other than an officer or enlisted man in the regular army, the navy, and the national guard or naval militia, while in the service of the United States, to present himself for, and to submit to registration, under the provisions of the Act of Congress, approved May 18, 1917, entitled "An Act to Authorize the President to increase temporarily the military establishment of the United States," he unlawfully and wilfully failed and refused to present himself for registration and to submit thereto, as provided by the said Act of Congress, approved May 18, 1917, and in accordance with the regulations prescribed by the President in his proclamation duly issued on the 18th day of May in the year of our Lord one thousand nine hundred and seventeen, against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided.

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Now, by stipulation of counsel, it is conceded that such proclamation as authorized by law, was issued by the President of the United States; that a date was fixed for registration under this law, which I have called your attention to, and this man lived within the district, the Southern District of New York, and that this defendant failed to register as required by that law.

His counsel has raised the question of the constitutionality of this so-called Selective Draft Law on his preliminary motions. I have ruled that the law is constitutional, and with that you have nothing to do. That is a question of law with which the Court has to do.

Now, that law being constitutional, it is a law which must be obeyed by this defendant.

I charge you, if you find from the evidence, he has violated this law by failing to register, then he may be found guilty of the violation of the law by you.

The evidence adduced here in this case shows to you that he was between the ages of twenty-one and thirty-one years of age, that he was a resident of this district and had his permanent home within this district on the day of registration, to wit: June 5, 1917, and that he intentionally and wilfully failed to register as is required by this Selective Draft Law.

Now, if you find that to be the evidence, and you find that his guilt is established beyond a reasonable doubt, that is, his guilt in violating or breaching this law, it is your duty to convict him for violating the law.

Now, no matter what you may think of this law, no matter what your views may be about it, you cannot let it enter into your deliberations at this time. It

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is the law of the land; it is the law of this community; it is a law which must be obeyed by everybody who lives in this community and in this land. The law may not meet with your purposes, may not meet with your views, but nevertheless it is the law here, and it must be obeyed. If a person breaches or violates that law, he is guilty of a violation of the law, and must be punished according as the statute indicates.

The facts must be established to your satisfaction beyond a reasonable doubt; that is to say, his guilt must be established to your satisfaction beyond a reasonable doubt.

You have nothing to do with the question of law. I have charged you as to that. If I make a mistake as to the law, it may be corrected by another tribunal, but it is final for you in your deliberations.

Now, you may ask what is a reasonable doubt. Well, a reasonable doubt is a doubt for which you can ascribe a reason; and if you have a reasonable doubt as to the guilt of the defendant on the facts here, after considering the evidence and applying the law, you must give the defendant the benefit of that doubt. He starts out with the presumption of innocence, and that presumption is with him throughout the trial. He is presumed to be innocent, and it is incumbent on the prosecution in this case, the government, to establish beyond a reasonable doubt, his guilt, to remove that presumption.

If you are satisfied from the evidence he is guilty beyond a reasonable doubt, then you will find him guilty, otherwise you will acquit him.

Mr. Content: In my desire for speed, I forgot to prove that the defendant admitted to me that he was not a member of the regular army, the navy, or

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the national guard or naval militia in the active service of the United States.

The Court: Is there any objection to stipulating that at this time?

Mr. Panken: No objection to stipulating that at this time.

The jury retired to deliberate upon their verdict.

Verdict.

The Clerk: Gentlemen, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: How do you find?

The Foreman: We find the defendant guilty as charged.

The Clerk: Harken to your verdict as it stands recorded in the case of the United States vs. Meyer Graubard, you find the defendant guilty as charged, and so say you all.

Mr. Panken: I ask that your Honor set aside the verdict of the jury on the ground that it is against the law.

The Court: Motion denied.

Mr. Panken: I take an exception.

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Assignments of Error.

IN THE SUPREME COURT OF THE UNITED STATES.

MEYER GRAUBARD,
Plaintiff-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

Now comes the above-named Meyer Graubard, plaintiff-in-error, by his attorney, and makes and files the following assignments of error upon which he will rely upon the prosecution of the writ of error to the Supreme Court of the United States sued by him herein to review the errors committed in the above-entitled cause in the United States District Court for the Southern District of New York and in the proceedings had therein and against him in the said court.

That the District Court erred as follows:

FIRST: In denying the defendant's motion made at the opening of the trial to dismiss the indictment upon the ground that the same did not charge the defendant with any offence against the United States or any law thereof upon the following grounds:

1. That there can be no violation of law in failing to comply with the provisions of the Act entitled:

"An Act to authorize the President to increase temporarily the military establishment of the United States."

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approved May 18, 1917, also known as the "Selective Draft Law" in that the said act is unconstitutional upon the following grounds:

A. It violates Section 1 of Article 3 of the Constitution of the United States, which reads as follows:

"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."

Under this Act the power to create courts is delegated by Congress to the President of the United States, in that the Act provides that the President of the United States shall create local tribunals and appeal tribunals that are to pass judicially on all questions of exemption.

B. It violates Section 13, Subdivision 1, of the Amendments to the United States Constitution, which reads as follows:

"Neither slavery nor involuntary servitude except as punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

C. It violates Article V of the amendment to the Constitution, which reads as follows:

"No person shall be deprived of life, liberty or property without due process of law."

D. It violates Article 1 of the amendments to the Constitution, which reads as follows:

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"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

SECOND: The Court erred in denying the motion made by the defendant at the close of the Government's case to direct an acquittal.

THIRD: In denying the defendant's motion to set aside the verdict of the jury rendered against him on the ground that it was contrary to the law.

FOURTH: The Court erred in denying the motion made by the defendant for an arrest of judgment on the ground that the facts stated in the indictment did not constitute a crime.

Wherefore, the defendant prays that judgment herein be reversed.

Dated, August 31, 1917.

I. M. SACKIN,
Attorney for Defendant,
Meyer Graubard,
Office & P. O. Address,
5 Beekman Street,
Borough of Manhattan,
City of New York.

UNITED STATES V. GRAUBARD

Petition for Writ of Error.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

 UNITED STATES OF AMERICA,
 Plaintiff,

against

 MEYER GRAUBARD,
 Defendant.

Now comes the above-named defendant, Meyer Graubard, by his attorney, and complains that on the 20th day of July, 1917, the District Court of the United States for the Southern District of New York, gave judgment in the above-entitled cause against the defendant in which judgment in this cause, certain errors were committed to the prejudice of this defendant.

FIRST: In respect to the Court's construction and application of the Constitution of the United States and its disposition of the merits of the cause, all of which will appear more in detail from the assignment of errors which is filed with this petition.

Wherefore, the said defendant, Meyer Graubard, prays for the allowance of a writ of error and for such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable the Justices of the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and so that the same being inspected, the

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said Justices of the Supreme Court of the United States cause further to be done therein to correct that error what of right and according to law ought to be done, and also that an order be made herein that all other proceedings in this action in this court be suspended and stayed until the determination of said writ of error by the said Supreme Court of the United States.

And your petitioner will ever pray, etc.

Dated, this 31st day of August, 1917.

I. M. SACKIN,
Attorney for Defendant,
Meyer Graubard,
Office & P. O. Address,
5 Beekman Street,
Borough of Manhattan,
City of New York.

Supersedeas.

Writ of error, to operate as a supersedeas, allowed, returnable, according to law, the defendant to furnish bail in the sum of Six thousand (\$6,000) dollars, conditioned according to law, subject to the approval of one of the Judges of the United States District Court for the Southern District of New York.

Dated, August 31st, 1917.

LOUIS D. BRANDEIS,
Associate Justice of the United
States Supreme Court for the
Second Circuit.

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Citation.

United States of America, ss:

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office by the District Court of the United States for the Southern District of New York, wherein Meyer Graubard is plaintiff-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this thirty-first day of August, in the year of our Lord one thousand nine hundred and seventeen.

LOUIS D. BRANDEIS,

Associate Justice of the Supreme Court
of the United States.

UNITED STATES V. GRAUBARD

Stipulation.UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.MEYER GRAUBARD,
Plaintiff-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

It is hereby stipulated and agreed that the record in the above-entitled case shall consist of the following papers now on file with the Clerk of the United States District Court for the Southern District of New York:

Writ of error and order allowing same, dated August 31, 1917.

Indictment, filed July 13, 1917.

Bill of exceptions, dated October 1, 1917.

Assignments of error, dated August 31, 1917.

Petition for writ of error, and supersedeas endorsed thereon, dated August 31, 1917.

Citation, dated August 31, 1917.

Stipulation settling record.

Clerk's certificate, dated October , 1917.

Dated, New York, October 20, 1917.

I. M. SACKIN,

Attorney for Plaintiff-in-Error.

FRANCIS G. CAFFEY,

United States Attorney for the
Southern District of New
York,

Attorney for Defendant-in-Error.

Consent.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

MEYER GRAUBARD,
Plaintiff-in-Error,

vs.

UNITED STATES OF AMERICA,
Defendant-in-Error.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, October 31, 1917.

J. M. SACKIN,
Attorney for Plaintiff-in-Error.FRANCIS G. CAFFEY,
Attorney for Defendant-in-Error.

UNITED STATES V. GRAUBARD

Clerk's Certificate.

United States of America, {
Southern District of New York, { ss:

UNITED STATES OF AMERICA,
Plaintiff-in-Error,

VS.

MEYER GRAUBARD,
Defendant-in-Error.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, this 5th day of *January* in the year of our Lord one thousand nine hundred and *seventeen* and of the Independence of the said United States the one hundred and *thirty*. *not second*

ALEX. GILCHRIST, JR.,
Clerk.